

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

U.S. BANK, NATIONAL ASSOCIATION, in its capacity as Trustee, JOSHUA N. TERRY, and ACIS CAPITAL MANAGEMENT, L.P.,

Plaintiffs,

v.

THE CHARITABLE DONOR ADVISED FUND, L.P., CLO HOLDCO LTD., and NEXPPOINT STRATEGIC OPPORTUNITIES FUND,

Defendants.

No. 1:21-cv-11059-GHW

**DECLARATION OF BLAIR A. ADAMS IN SUPPORT OF PLAINTIFFS'
MOTION TO DISMISS DEFENDANTS' COUNTERCLAIMS AND FOR
JUDGMENT ON THE PLEADINGS ON PLAINTIFFS' CLAIMS**

I, **BLAIR A. ADAMS**, an attorney duly admitted to the Bar of the State of New York, hereby declare and state under the penalties of perjury as follows:

1. I am a partner at Quinn Emanuel Urquhart & Sullivan, LLP, 51 Madison Avenue, 22nd Floor, New York, New York 10010, and am counsel to Plaintiffs Acis Capital Management, L.P. (“ACM”) and Joshua N. Terry, in the above-captioned matter.

2. I submit this declaration in support of Plaintiffs’ Motion to Dismiss Defendants’ Counterclaims and for Judgment on the Pleadings on Plaintiffs’ Claims.

3. Attached as Exhibit 1 is a true and correct copy of the Transcript of the February 23, 2023 Hearing on Defendants’ Motion to Dismiss, dated February 23, 2023.

4. Attached as Exhibit 2 is a true and correct copy of the Second Amended Complaint, dated June 20, 2019, filed in *Acis Cap. Mgmt. L.P. and Acis Cap. Mgmt. GP, LLC v. Highland Cap. Mgmt., L.P., et al.*, Adv. Pro. No. 18-03078 (Bankr. N.D. Tex.), Dkt. 157.

5. Attached as Exhibit 3 is a true and correct copy of the agreement between HCLOF, ACM, and U.S. Bank National Association, dated February 28, 2023 (the “2023 Settlement Agreement”).

6. Attached as Exhibit 4 is a true and correct copy of the ACIS CLO 2015-6 Offering Circular, dated April 14, 2015.

7. Attached as Exhibit 5 is a true and correct copy of the Transcript of the May 1, 2023 Pre-Motion Conference in this Action.

8. Attached as Exhibit 6 is a true and correct copy of the decision of the New York Supreme Court, dated November 13, 2017, filed in *PIMCO Absolute Return Strategy 3D Offshore Fund Ltd. v. Wells Fargo Bank*, Index. No. 654743/17 (N.Y. Sup. Ct.).

9. Attached as Exhibit 7 is a true and correct copy of the decision of the Minnesota District Court, dated October 26, 2022, filed in *In the Matter of the Trust Established Under the Pooling and Service Agreement relating to the Wachovia Bank Commercial Mortgage Trust Commercial Mortgage Pass-Through Certificates, Series 2007-C30*, Case No. 62-TR-CV-19-33 (Minn. Dist. Ct.).

10. Attached as Exhibit 8 is a true and correct copy of the ruling of U.S. Bankruptcy Judge Stacey G.C. Jernigan, dated August 30, 2018, filed in *In re Acis Cap. Mgmt., L.P.*, 18-30264-SGJ-11 (N.D. Tex. Bankr.), Dkt. 549.

11. Attached as Exhibit 9 is a true and correct copy of the Portfolio Management Agreement between ACIS CLO 2014-4 Ltd. and Acis Capital Management, L.P., dated June 5, 2014 (the “Acis 4 PMA”).

12. Attached as Exhibit 10 is a true and correct copy of the ACIS CLO 2014-4 Indenture, dated June 5, 2014 (the “Acis 4 Indenture”).

13. Attached as Exhibit 11 is a true and correct copy of the Portfolio Management Agreement between ACIS CLO 2014-5 Ltd. and Acis Capital Management, L.P., dated November 18, 2014 (the “Acis 5 PMA”).

14. Attached as Exhibit 12 is a true and correct copy of the ACIS CLO 2014-5 Indenture, dated November 18, 2014 (the “Acis 5 Indenture”).

15. Attached as Exhibit 13 is a true and correct copy of the Contempt Order of U.S. Bankruptcy Judge Stacey G.C. Jernigan, dated August 4, 2021, filed in *In re Highland Cap. Mgmt., L.P.*, Case No. 19-34054-sgj11, Dkt. 2660 (N.D. Tex. Bankr. 2021).

16. Attached as Exhibit 14 is a true and correct copy of the Complaint, dated October 4, 2022, filed in *NexPoint Diversified Real Estate Trust v. Acis Cap. Mgmt., L.P., et al.*, Index No. 653654/2022 (N.Y. Sup. Ct.).

17. Attached as Exhibit 15 is a true and correct copy of the Notice of Appeal from the judgment of the United States District Court for the Northern District of Texas that Highland CLO Funding, Ltd. (“HCLOF”) filed on July 26, 2019 in *In re Acis Capital Management, LP.*, Appeal No. 19-10847, Dkt. 4 (5th Cir.) (the “Fifth Circuit Appeal”).

18. Attached as Exhibit 16 is a true and correct copy of the Opening Brief that HCLOF filed in the Fifth Circuit Appeal on September 20, 2019.

19. Attached as Exhibit 17 is a true and correct copy of U.S. Bank, National Association's Memorandum of Law in Support of its Motion to Dismiss the Second Amended Complaint, dated January 27, 2022, filed in *NexPoint Strategic Opportunities Fund v. Acis Cap. Mgmt.*, 1:21-cv-04384-GHW (S.D.N.Y.), Dkt. 81.

20. Attached as Exhibit 18 is a true and correct copy of HCLOF's Memorandum of Law in Support of its Motion to Intervene, dated November 24, 2021, filed in *NexPoint Strategic Opportunities Fund v. Acis Cap. Mgmt.*, 1:21-cv-04384-GHW (S.D.N.Y.), Dkt. 44.

21. Attached as Exhibit 19 is a true and correct copy of HCLOF's Memorandum of Law in Support of its Motion to Dismiss, dated January 27, 2022, filed in *NexPoint Strategic Opportunities Fund v. Acis Cap. Mgmt.*, 1:21-cv-04384-GHW (S.D.N.Y.), Dkt. 79.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 15, 2023

By: /s/ Blair A. Adams
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